

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILKES-BARRE DIVISION**

IN RE:)	Case No. 5:13-bk-02006-JJT
)	Chapter 7
ROBERT JOHN REED,)	
)	
Debtor.)	
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ROBERT JOHN REED,)	Adversary No. 5:13-ap-00207-JJT
ANNALISA BLACK, and ALBY)	
LESLIE BLACK, JR.,)	
)	
Plaintiffs,)	Bankruptcy Courtroom No. 2
)	274 Max Rosenn U.S. Courthouse
versus)	197 South Main Street
)	Wilkes-Barre, Pennsylvania 18701
HELLER'S GAS, INC. d/b/a)	
BACK MOUNTAIN BOTTLED GAS,)	
)	June 17, 2014
Defendant.)	12:31 P.M.

TRANSCRIPT OF TESTIMONY OF TRIAL (DOCKET 7)
BEFORE HONORABLE JOHN J. THOMAS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Robert John Reed:	Sabatini Law Firm, LLC By: CARLO SABATINI, ESQ. 216 North Blakely Street Dunmore, Pennsylvania 18512
For Heller's Gas, Inc.:	ROBERT D. SCHAUB, ESQ. 15 South Franklin Street Wilkes-Barre, Pennsylvania 18711-0075
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1 (Proceedings commenced at 11:30 A.M. At the requested of the
2 ordering party, only the testimony of Tom Gordon, commencing at
3 12:31 P.M. and concluding at **** are transcribed.)

4 THOMAS GORDON, PLAINTIFF'S WITNESS, SWORN

5 THE COURT: Okay. Could you spell your last name,
6 please?

7 THE WITNESS: G-O-R-D-O-N.

8 THE COURT: Thank you.

9 THE WITNESS: You're welcome.

10 THE COURT: Okay, Mr. Sabatini.

11 DIRECT EXAMINATION

12 BY MR. SABATINI:

13 Q Mr. Gordon, could you please state your occupation?

14 A I'm a Vice President of Collections for Heller's Gas.

15 Q And how long have you been with Heller's Gas?

16 A Uh, five years.

17 Q And what did you do before that?

18 A I've done a number of things before. How far back you
19 want to go?

20 Q Well, were you ever an attorney, licensed to practice in
21 Pennsylvania?

22 A Yes.

23 Q And, uh -- without -- are you still licensed to practice
24 in Pennsylvania?

25 A No.

1 Q And without getting too much into the reasons for that, I
2 would just like to -- could you agree that the reason you're no
3 longer licensed has nothing to do with whether you were
4 competent as an attorney?

5 A Yes, I'd agree with that.

6 Q So, are you responsible for formulating the policies and
7 procedures that Heller's Gas follows to collect accounts, both
8 outside of bankruptcy and after a bankruptcy has been filed?

9 A No, I'm not responsible for formulating, I'm responsible
10 for implementing them.

11 Q Do you have any input into the formulation of those?

12 A Uh, in what regard?

13 Q Do you -- who is responsible for formulating them?

14 A The President and owners.

15 Q Who's that?

16 A Paul Gardner, Junior.

17 Q And is he here today?

18 A No.

19 Q Um, so does Mr. Gardner create these policies with any
20 input from you? Or does he --

21 A No.

22 Q Does he do them --

23 A They were -- they were already in place when I, uh, was
24 hired.

25 Q Are they written policies or --

1 A Not that I know of. This is what I was told is how the
2 procedure would be. And it's, of course, is what he also
3 briefs all the managers and other people in who are involved
4 with accounts receivable, and that sort of thing.

5 Q So there are no written policies or procedures regarding
6 how accounts are to be collected before a bankruptcy case is
7 filed?

8 A N -- N -- you're asking me is there a bankruptcy policy.

9 Q No, I'm asking you in the situation where someone does not
10 file bankruptcy --

11 A Okay.

12 Q -- are there any written policies or procedures for how
13 you're to collect that person's account?

14 A Uh, I don't know -- there's not like a handbook or
15 anything, Mr. Sabatini, or a manual. There's instruction,
16 there's practice and policy, and in the event of -- if there's
17 some particular issue that comes up that needs clarification,
18 there could be an e-mail or meeting. But there's not like a
19 manual or a guide or some kind of --

20 Q Whether it's in manual form or a guide form, is there any
21 standing writing that --

22 A That's what I'm saying --

23 Q Nothing.

24 A -- there -- there was no standing -- there's no compiled
25 book. If a particular issue comes up --

1 THE COURT: I think what Mr. Sabatini is asking, if
2 there's a written procedure.

3 THE WITNESS: Yeah. No.

4 BY MR. SABATINI:

5 Q And is there any written procedure that --

6 THE COURT: And when we talk "written," we're talking
7 electronic writing.

8 THE WITNESS: Right. And I was going to say, it
9 could be an ad hoc thing. If something comes up, relates to a
10 particular issue, there could be an exchange of e-mails. But
11 it's not a formal policy.

12 MR. SABATINI: Right.

13 THE WITNESS: You know --

14 BY MR. SABATINI:

15 Q And let me -- let me say, forgetting about any particular
16 issue that arises --

17 A Okay.

18 Q -- any particular case --

19 A Okay.

20 Q -- are there any writings, paper or electronic, that
21 describe how you are to collect accounts before a bankruptcy is
22 filed?

23 A Uh, not that I'm aware of. I don't re -- I don't refer to
24 anything. I'd be the person who would have it, I would think.
25 I -- I don't have anything like that, so --

1 Q All right. You would be the one who would know, and you
2 don't know of anything.

3 A Right.

4 Q So it's safe to say --

5 A Right.

6 Q -- there is nothing, right?

7 A Right.

8 Q And is -- same question, but for after a bankruptcy has
9 been filed, are there any writings --

10 A Nope.

11 Q -- that describe --

12 A No.

13 Q -- how you're to collect an account once a bankruptcy case
14 has been filed?

15 A What we have is a clear policy. I'm not aware of it being
16 reduced to a writing.

17 Q Thank you. Now earlier you were sitting in the courtroom
18 when your attorney was having this colloquy with the Court.

19 A Right.

20 Q And did you hear everything that was discussed there?

21 A I -- I think I heard most of it, yes.

22 Q And is there any representation that he made at all today
23 that you would say was not completely 100 percent accurate that
24 you would like to clarify?

25 A Uh, well, I -- I don't think he was being disingenuous,

1 but I mean obviously --

2 Q Right.

3 A -- obviously if there's something that would be helpful to
4 the Court, I'd certainly be willing to answer it and, uh --

5 Q No, and, sir, I did not mean to imply that he was --

6 A Right.

7 Q -- being disingenuous.

8 A Right.

9 Q But you're the person who has the information that I'm
10 assuming --

11 A Right.

12 Q -- he was basing his representations on. So you heard
13 it --

14 A Right.

15 Q -- and -- you heard what was said to the Court --

16 A Okay.

17 Q -- and maybe there's something that you didn't explain
18 clearly to him beforehand, and when you heard it said to the
19 Court, you thought "that doesn't seem quite right."

20 A Okay. Is there a particular issue that you're honing on?

21 MR. SCHAUB: Yeah, is there a particular issue,
22 Judge?

23 THE COURT: Well, just --

24 MR. SCHAUB: Objection.

25 THE COURT: Okay. I'm going to sustain the objection

1 because I think the answer -- the question is very vague.

2 Mr. Schaub made -- entered into some legal
3 conclusions when he was arguing his case, and I don't think
4 this witness can separate what those legal conclusions were
5 from what the factual arguments are.

6 So if you've got specific concerns about the factual
7 allegations that were advanced by Mr. Schaub, then I think you
8 can frame the question in that regard. But otherwise, I don't
9 think it's fair to the witness to -- unless you parse it that
10 way, okay?

11 MR. SABATINI: Thank you, Your Honor.

12 BY MR. SABATINI:

13 Q Did you hear Mr. Schaub say that you don't expect to be
14 paid for gas until it's used?

15 A I -- I heard him having a difficult time trying to explain
16 the propane company policy. I'm not sure that he was trying to
17 define the whole overall package of how that works.

18 So in that regard, yeah, I do think further
19 clarification is necessary.

20 Does that answer your question?

21 Q No, you did. Could you please clarify it?

22 A When Heller's Gas provides propane to someone, it is at
23 their request for their benefit for a variety of purposes.
24 When we deliver that propane, there is a bill that accompanies
25 it, either left at the premises or sent through the mail. That

1 bill is due and payable within 30 days. Okay?

2 Q I'm sorry. Let me stop you there.

3 A Sure.

4 MR. SCHAUB: Please don't stop him. Please, Judge,
5 don't let him interrupt. You asked a question, please let him
6 finish the answer.

7 THE COURT: That's fine. I'll let you finish the
8 answer.

9 THE WITNESS: Okay.

10 BY MR. SABATINI:

11 A That -- that bill is due and payable within 30 days.
12 There are, however, unique conditions because of the uniqueness
13 of the propane business, which is not under the PUC and which
14 has its own unique -- it's not the car business, it's not --
15 it's propane. Part of that payment is conditional upon use.
16 And if there's use, or not use, that is calculated into what is
17 ultimately owed by the customer.

18 If I could give you an example, Mr. Sabatini, if it'd
19 be helpful to you. And I -- I want to be helpful to you, so if
20 I'm not clear, please direct me to be clear. If we bring out
21 100 gallon propane to somebody, and we set it at their cabin
22 site, they decide they're going to go to Europe instead, they
23 don't want it. They don't want it. We go pick it up, and
24 they're refunded the entire amount. Even though, at that same
25 time, it was due and payable within 30 days as a standing

1 matter of accounting and distribution of goods.

2 There's that -- they get -- in other words, we take -
3 - come back -- they call us up, "We decided we're going to
4 Europe instead." We pick up the tank, they don't owe us
5 anything.

6 Q So you -- you deliver a tank to someone's property --

7 A Right.

8 Q And this is one of your tanks. It's not a tank that --

9 A Right.

10 Q -- they purchased.

11 A Exactly, yeah.

12 Q You retain ownership of the tank.

13 A Absolutely.

14 Q So you deliver this tank to their property. You retain
15 ownership of it. You fill the tank up with propane. And they
16 never actually occupy the property. They don't use one ounce
17 of that propane.

18 A Right.

19 Q They call you, and they never give you a dime.

20 A Never a dime, right. That happens.

21 Q They call you, you take the tank back --

22 A Right.

23 Q -- and they owe you not a dime.

24 A Not a dime. And, in fact, even -- even if there's
25 extenuating circumstances where there is like a partial use,

1 pilot light, that sort of thing, we just write it off. We --
2 if it's minimal, you know, that we put 100 gallons in, we get
3 99 -- 99.5 back, we still -- they don't owe us anything.

4 Q You don't charge them for the installation?

5 A No.

6 Q And you don't charge them interest?

7 A We do charge them interest, but if they don't use any
8 propane, and as I say -- and there -- there could be late fees,
9 too, or anything. And, of course, the driver going to get it,
10 we -- we incur some expenses there. We don't do it. It's just
11 a matter of our company policy.

12 We also do it for hardship cases in the case in the
13 same -- same light.

14 Q So if they don't use any of the propane, and they return
15 the tank six months after you installed it, you write off the
16 six months of interest?

17 A That's absolutely right.

18 Q And what if --

19 A And I think Mr. -- Mr. Harmon could say he does that at
20 the store -- I do it at the corporate level, and they also do
21 it at the store level.

22 Q And is that true even if they use some of the propane?

23 A Well, I had -- it'd be depend on how much. You know?

24 Q How?

25 A Well, if they use half, they have to pay for half.

1 Q They have to pay half -- for half of the propane.

2 A Right.

3 Q What about the interest?

4 A If -- they -- they'd be interest and finance charge on the
5 unpaid portion after -- after 30 days.

6 Q After 30 days.

7 A But -- I say, once again, for clarification, Mr. Sabatini,
8 there are a number of reasons why that would -- would or would
9 not be enforced. Have a hardship -- someone, you know, there's
10 a death in the family, uh, the house burns down.

11 Q I'm --

12 A There's a number of things that are part of our ongoing
13 every day policy where we wouldn't insist upon it.

14 Q It -- that's a policy or that's something that --

15 A Practice.

16 Q -- in the exercise of discretion, you say, "Well, in this
17 particular hardship case, I'm not going to charge interest."

18 A That's correct. If there's --

19 Q But you have the --

20 A There's --

21 Q -- right --

22 A There's a discretionary factor there.

23 Q But you have the right contractually to charge the
24 interest if you wish.

25 A Are -- are you saying we do have the right or are you

1 saying I just think we have the right? I don't understand your
2 question.

3 Q I'm saying when you decide to write off interest because
4 of one of these hardships --

5 A Right.

6 Q -- are -- when you're writing that off, is that a decision
7 that you're doing that just because you choose to or because
8 you're required to?

9 A No, we choose to.

10 Q So you have the right to not erase any of the interest.

11 A As long as it's lawful, and -- and relates to propane
12 used, that's correct.

13 Q What's the interest rate?

14 A I'm sorry?

15 Q What is the interest rate?

16 A Uh, the -- the legal rate of interest, it's one and a
17 half percent a month.

18 Q One and a half percent per month?

19 A Yes, it's 18 per annum.

20 Q Now if someone owns the propane tank, and asks you to fill
21 the tank with propane --

22 A Right.

23 Q -- and then they move to Europe, what happens then?

24 A It's a -- a customer-owned tank, everything that goes in
25 is theirs in perpetuity. Whether it's bankruptcy. They want

1 to let it sit there and not use it ten years, it doesn't
2 matter. It's a customer-owned tank, once it goes in, it's
3 theirs.

4 Now they -- they would owe us the money for that.
5 And if ultimately they didn't pay, without bankruptcy
6 protection, we would pursue legal action to collect it.

7 Q So they own the gas as soon as you put it in the tank if
8 it's their tank.

9 A If it's a customer-owned tank. Now they do have -- also
10 have the option, as anyone else would who has a customer-owned
11 tank, of calling up and saying, "We decided to move our base of
12 operations, we want you to pump out the propane and credit our
13 tank -- our account for it." That could happen, and it does
14 happen. We'd comply with that wish, and then hopefully keep
15 them as a customer in their new location.

16 Q Now did you send -- do you know if Heller's Gas sent a
17 bill to Mr. Reed on or about April 30th of 2013?

18 A I know that there were -- there were some post bankruptcy
19 filing statements that went out in the context of the ongoing
20 negotiation of reaffirmation of the debt that you were involved
21 in also.

22 Q This was a negotiation regarding a reaffirmation of the
23 debt?

24 A Yes, you were talking about -- I'm sure -- was it -- uh --
25 uh -- Mr. Reed or Mr. Black? Who was the customer of Back

1 Mountain? I want to make sure I'm not misrepresenting --

2 Q Mr. Reed is Back Mountain.

3 A Mr. Reed, Back Mountain. Yeah, uh -- because he said he
4 didn't even know that we were included in the bankruptcy, and
5 he wanted to know about, you know, the possibility of
6 continuing for service. In fact, he apologized we were
7 included but we said, okay, we'll work that out, and there was
8 a series of e-mails that went back and forth about, you know,
9 whether to pay, whether to continue service, and that sort of
10 thing.

11 Q All right. But just to be clear --

12 A Yeah.

13 Q -- did Mr. Reed or I ever use the word "reaffirmation?"

14 A Uh, the word, no. The principle, the context, the
15 meaning, yes.

16 Q Okay. So the statement that went to Mr. Reed --

17 MR. SABATINI: Well, actually I'd like to, at this
18 point, to put in another stipulation. The parties have agreed
19 that the allegations in the complaint at Paragraph 23 and
20 Paragraph 24 will be admitted by the defendant.

21 MR. SCHAUB: That's correct, Judge.

22 THE COURT: Okay. So recognized.

23 MR. SABATINI: May I approach, Your Honor?

24 THE COURT: Yes.

25 (Pause)

1 BY MR. SABATINI:

2 Q I'm handing you a copy of the complaint that was filed in
3 this case, and I've turned it to Exhibit D, and I'd like you to
4 tell me if you recognize that -- that document.

5 A Um, this looks like the -- a copy of our standard
6 statements.

7 Q All right. And that was sent to Mr. Reed in this case?

8 A Uh --

9 THE COURT: Is that the same as Exhibit -- as Exhibit
10 E?

11 MR. SABATINI: Yes, Exhibit E, yes, Your Honor, the
12 first -- the first page.

13 THE COURT: The first page. Okay. All right. Thank
14 you.

15 BY MR. SABATINI:

16 A Yeah, this was a Back Mountain account before it came over
17 to, uh --

18 Q All right. And I'd like, if you could, to just go through
19 that statement and tell me what each of those lines represents
20 and what the dollar amounts represent.

21 A Well, uh, under the description, is that --

22 Q Correct.

23 A Okay. There was a -- a balance forward of \$230.04.

24 Q What is that?

25 A When is that?

1 Q What is that? What is the balance forward?

2 A That would be for the propane that was delivered.

3 Q Propane that was delivered, but which had not yet been
4 paid, is that right?

5 A That's correct.

6 Q Okay. So the balance forward includes your company's
7 charge for all of the propane that was delivered, whether or
8 not that propane had actually been used at that point, is that
9 right?

10 A Well, that's right, with this clarification. Is that any
11 propane which is not used, that amount of value comes off of
12 what is due.

13 Q Okay. But that hasn't happened yet, right? Now we're
14 just on the balance forward.

15 A Right, okay.

16 Q Right?

17 A I'm with you.

18 Q So the balance forward --

19 A Yeah.

20 Q -- line represents the amount that Heller's claims it's
21 owed for all the propane that's been delivered, irrespective of
22 the current balance -- I'm sorry -- the current amount that
23 remains in the tank, is that accurate?

24 A That -- that represents the value of the delivery.

25 Q All right. And does it take -- does the balance forward

1 line itself take into account whether or not any of that
2 delivery has actually been consumed by the user?

3 A That line itself -- by itself as written does not.

4 Q Thank you. What's the next line?

5 A Is a credit card payment, \$75, which is credited to the
6 account.

7 Q All right. And what's the line after that?

8 A Gas and tank, 82.62.

9 Q And what is that?

10 A That -- that is -- if I understand this statement
11 correctly, that means that's how much gas was delivered into
12 the tank.

13 Q So are you telling me that that means that that amount of
14 gas was delivered into the tank on that day?

15 A Well, you -- the -- the -- that's what the statement
16 reflects. It's -- it's -- there's a tank. This is how much
17 propane we put in it, and this is how much that propane is
18 worth. And there's, of course, any payment are credited
19 against it.

20 Q All right. Maybe this will help. I mean earlier the
21 parties stipulated that all of the gas in the tank was
22 prepetition gas that had been delivered before the bankruptcy
23 case was filed, and that after the bankruptcy case was filed,
24 there were no deliveries. Could you tell me whether any
25 delivery was made to his tank after the bankruptcy case was

1 filed?

2 A I -- I -- there were no deliveries after. But I -- I
3 disagree with your characterization of it. Your
4 characterization is that the propane was all -- this reflects a
5 demand for payment of pre-filing pro -- and it does not.

6 Q I --

7 A It reflects the value of the propane.

8 Q I haven't said that it represents a demand for payment.

9 A Okay.

10 Q But --

11 A Then I misunderstood you; I apologize.

12 Q And so that the line -- the 18 gallons, I think you said
13 it is --

14 A I see "gas and tank," 82.62.

15 Q That -- is that -- and 82.62 is the dollar amount, right?

16 A Yeah.

17 Q That's the dollar amount, right?

18 A Right.

19 Q And 18 is -- is the number of gallons in the tank, is that
20 right?

21 A I'm sorry, repeat that?

22 Q Is -- are there any other numbers on that line?

23 A On that line, no. It's just -- you asked me to read
24 description, and we're over into the amount. But to the left
25 of that where it says "gas and tank," it says 18.

1 Q Right. All right. So isn't it true that that 18 does not
2 represent a delivery that was made on that date?

3 A (No verbal response)

4 Q Is that correct?

5 A (No verbal response)

6 Q Instead that number represents what your technician
7 measured as being in the tank.

8 A It's remaining in the tank.

9 Q Correct?

10 A Yeah.

11 Q So that line does not represent more gas that was
12 delivered. Instead, that line represents what you calculated
13 on that date as the value of the gas that remained in the tank
14 on that date.

15 A That's correct.

16 Q Wasn't that amount already included in the balance
17 forward?

18 A Right. So -- so what you're -- to understand by that is
19 that what we're seeking payment of here within the context of
20 reaffirmation is the remaining gas of \$82.62.

21 Q I'm not --

22 A Not the original figure of what was delivered.

23 Q I -- if you could answer the question. That -- that
24 dollar amount that's on that line --

25 A Right.

1 Q -- doesn't that dollar amount represent an amount that
2 you're claiming is due for gas which is duplicating an amount
3 that was already in the balance forward line?

4 A I'm not trying to bicker. I'm trying to be -- I'm trying
5 to answer as clearly as I can. Within the delivery, part of
6 that delivery, that 18 gallons that that dollar amount
7 represents, you can say was part of the original delivery
8 that's represented in the dollar figure of 232.64. Is that
9 helpful?

10 THE COURT: Could I -- could I ask a question, maybe
11 to clarify what I think -- and you can object to it if you'd
12 like. I'm just trying to maybe shortcut this.

13 I see in front of me an exhibit, and the exhibit is -
14 - it's dated April 30th, I guess, 2013. And the payment
15 identified is due is 251.97.

16 THE WITNESS: Right.

17 THE COURT: Maybe if we ask this witness just to
18 identify what are the components of that bill, perhaps that
19 would at least allow us to have an understanding of how it was
20 created. Is that -- is that a fair statement -- fair question?

21 MR. SABATINI: Sure.

22 MR. SCHAUB: Yes, Judge.

23 THE COURT: Okay.

24 MR. SCHAUB: Yeah.

25 THE COURT: So a bill was sent --

1 THE WITNESS: Right.

2 THE COURT: -- I guess.

3 THE WITNESS: Yeah.

4 THE COURT: And I think that date's April 30th, 2013,
5 showing a payment due of 251.97. Could you identify how that
6 bill was calculated?

7 THE WITNESS: Okay. That -- that 251.97 is the total
8 value of the -- of all the propane delivered, even pre-filing,
9 and late fee and finance charge.

10 However, this bill was presented with the clear
11 understanding and communication to the parties and the attorney
12 that this bill was for 82.62, which was the gas remaining in
13 the tank. This is merely informational about how much
14 everything was. The actual bill owed at that point, if they
15 wanted to continue service, was the 82.62. And I think there's
16 e-mails to that effect that specifically -- between Mr.
17 Sabatini and the store manager that clarify that.

18 THE COURT: You can follow-up, Mr. Sabatini, unless
19 you have an objection.

20 MR. SCHAUB: Pardon me, Judge?

21 THE COURT: Unless you have an objection. I'm
22 telling Mr. Sabatini he can follow up on that --

23 MR. SCHAUB: Oh, yeah, surely.

24 THE COURT: -- unless you have an objection.

25 MR. SCHAUB: Sure. No. No, that's fine, Judge.

1 BY MR. SABATINI:

2 Q So that 251.97, could we agree that it double counts the
3 amount that you're claiming was owed for the gas that was still
4 in the tank?

5 MR. SCHAUB: I object to that, Judge. It's the third
6 time he's asking. He keeps using this phrase "double counts."
7 Now Mr. Gordon has just made very clear that this invoice was
8 information, and it specifically identifies the value of the
9 gas, and it specifically identifies for Mr. Sabatini --

10 THE COURT: I'm going to sustain --

11 MR. SCHAUB: -- and his client --

12 THE COURT: I'm going to sustain your objection. I
13 think you're free to ask that -- whether this 251.97 double
14 counts, but I don't think that you asked it that way.

15 BY MR. SABATINI:

16 Q Does the 251.97 double count to anything?

17 A You -- you -- I'm not trying to -- what do you mean by
18 "double count?"

19 Q The way that I'm looking at the bill is -- is that gas and
20 tank amount is billed. And that previously, the balance
21 forward was billed. And that both of those numbers are a
22 component of the 251.97.

23 A Okay. Here's the best way I can answer your question, and
24 if I don't answer to your satisfaction, please answer me again.
25 Based on this document and the conversations our store manager

1 had with you and Mr. Reed, if someone was to call our store, or
2 call me and say, "what -- I want to still be your customer,
3 what do I owe?"

4 THE COURT: Well, you know what, let's --

5 MR. SABATINI: Uh --

6 THE COURT: Let's get beyond that. And, again, I'm
7 not trying -- all I'm trying to do is expedite this process.

8 THE WITNESS: Right.

9 THE COURT: You've already made it orally clear --

10 THE WITNESS: Right.

11 THE COURT: -- that you don't believe the 251.97 was
12 a demand --

13 THE WITNESS: Right.

14 THE COURT: -- based on other documentations and
15 conversations.

16 THE WITNESS: Okay.

17 THE COURT: I think the only -- Mr. Sabatini -- all
18 Mr. Sabatini is asking --

19 THE WITNESS: Okay.

20 THE COURT: -- if a component of the 251.97 number
21 that you see on this --

22 THE WITNESS: Okay.

23 THE COURT: -- counted the \$82.62 twice.

24 THE WITNESS: That -- it didn't -- it's within the --
25 it's within that total figure.

1 THE COURT: It counted it twice, is that correct?

2 THE WITNESS: No, it's within the -- it's within --
3 it's what's -- it's what's within the 251.

4 THE COURT: It --

5 THE WITNESS: It -- it doesn't extend 251 --

6 THE COURT: Is 82.62 --

7 THE WITNESS: Right.

8 THE COURT: -- a component of the -- of the
9 previous --

10 THE WITNESS: Yes.

11 THE COURT: -- balance do of 232.04.

12 THE WITNESS: It -- it's a component.

13 THE COURT: Okay. I think that answers your
14 question, doesn't it?

15 MR. SABATINI: It does. Thank you, Your Honor.

16 THE COURT: Again, I'm trying to be fair here. If
17 you want to object, Mr. Schaub, don't -- don't hesitate just
18 because I'm asking the question.

19 MR. SCHAUB: No, I appreciate you doing that, Your
20 Honor.

21 THE COURT: I want you to understand that. I don't --
22 I don't -- I won't be offended.

23 MR. SCHAUB: I know you won't.

24 BY MR. SABATINI:

25 Q Now you said before that the statement was sent in the

1 context -- but I don't want to mis -- so feel free to correct
2 me. But that your state -- the statement was sent in the
3 context of conversations that I had with somebody, or -- could
4 you -- could you elaborate on that?

5 A Yes. Whenever someone files bankruptcy, and we're given
6 notice of it, we give the customer the opportunity of
7 continuing as our customer. In that context, we're not asking
8 them to pay anything that's part of the bankruptcy, according
9 to our policy. But if they want to continue with us, we ask
10 them to pay for the gas that's remaining in the tank, and pay
11 C.O.D. going forward until they've established credit once
12 again, or unless the bankruptcy's dismissed, or some other
13 contingency.

14 Q I'm -- I'm sorry, I don't think I asked that question
15 clearly enough. Did you say before that I had a conversation
16 with someone?

17 A You -- you had exchange of e-mails, and you had a
18 conversation with me.

19 Q Okay. And during the conversation with you --

20 A Yes.

21 Q -- did I ask you to send a monthly statement?

22 A Did you ask for statements to me? Uh, no, you didn't ask
23 me to send monthly statements.

24 Q But a number of monthly statements were sent to this -- to
25 this -- to Mr. Reed, nevertheless, right?

1 A During the course of time, the issue was unresolved as to
2 whether to continue as customers. That information was
3 provided so they could make the decision.

4 Once that -- once the decision was made that they
5 weren't going to continue, all statements stopped.

6 Q Okay. But I never asked for you to send any of those
7 statements to Mr. Reed, is that correct?

8 A What you asked me to do is keep the issue of that
9 possibility open.

10 Q Did I ever ask for you to send the monthly statement to
11 Mr. Reed?

12 A No.

13 Q When someone files a bankruptcy case, are monthly
14 statements generally continued to be sent to --

15 A Absolutely not.

16 Q Let me just get through the end of the question, sorry.
17 When -- when a bankruptcy case is filed, are monthly statements
18 generally sent to bankruptcy debtors who remain in the system
19 as active customers?

20 A People who remain as customers receive bills for the
21 propane that they order. The people who are on C.O.D. must pay
22 for that propane as it's delivered.

23 Q So if someone remains an active customer, and they have
24 propane that was ordered before the case was filed, then you
25 continue to send that person monthly statements asking them to

1 pay for the propane --

2 A No.

3 Q -- that was ordered before the case was filed?

4 A No. What they have to do is pay for the propane that
5 remains in the tank, and then going forward be C.O.D.

6 Q All right. I'm going to show you --

7 A Okay.

8 MR. SABATINI: May I approach, Your Honor?

9 THE COURT: Yup.

10 BY MR. SABATINI:

11 Q This is Document 8 on the docket, and this is an answer
12 that was filed by your previous attorney to the complaint, the
13 amended complaint that I filed in this case. And I'd like to
14 direct your attention to Paragraph 21 of your answer. And I'd
15 like for you to read that out loud, please, if you could.

16 A This is an answer, so -- is that correct?

17 Q Yes.

18 A So I don't have any context of what it's answering.

19 Q I understand.

20 THE COURT: I -- I --

21 A Should -- do you want me to just read it verbatim anyway?

22 THE COURT: The question is just to read it, okay?

23 THE WITNESS: Okay.

24 THE COURT: Okay. You're not asked to explain.

25 THE WITNESS: Okay.

1 A "Denied as stated. By way of further response, at the end
2 of April, 2013 billing cycle, and in the ordinary course of
3 business operation, a computer invoice was generated to the
4 debtor is being one of well over 60,000 invoices generated by
5 computer as debtor remained in the system as an active
6 customer. As of the end of April, the terms of adequate
7 assurance for post petition service, as solicited by debtor's
8 legal counsel, had not yet been solidified between defendant
9 and legal counsel for debtor."

10 Q Thank you. So I was hoping you'd give us some context for
11 the first sentence there -- well, the second sentence, that at
12 the end of April, 2013, a computer invoice was generated to the
13 debtor is being one of well over 60,000 invoices generated by
14 computer as debtor remained in the system as an active
15 customer." What does -- that seems to me to indicate that if
16 you remain in a system as an active customer, you're going to
17 continue to get these invoices for prepetition bills.

18 A You will get a statement until such a time which is
19 determined that you no longer wish to be a customer. During
20 that period of time, we allow quite a bit of latitude --
21 because people in bankruptcy have a difficult time -- to make
22 that decision. As long as that decision has not been made yet,
23 statements will be generated. I don't know what 60,000 has to
24 do with it, I -- I -- we don't have 60,000 people in
25 bankruptcy, I don't --

1 Q All right. If we can move on to the Blacks, and I'm going
2 to -- I'm going to show you -- I'm going to provide to you what
3 your attorney provided in discovery because I think that this
4 might help you with dates and times, unless you know. Do you
5 know what the date was that the tanks were taken from the
6 Blacks' case?

7 A I don't have all this information off the top of my head,
8 no.

9 Q Well, maybe -- does -- can we agree that when the tanks
10 were repossessed -- when the tanks were taken from the Blacks'
11 residence, that an employee of Heller's Gas went out to the
12 residence with instructions to either obtain payment or to
13 remove the tanks?

14 A That -- our standard -- it could be -- to receive payment
15 for the gas remaining in the tank, not general statement like
16 you said, receive -- or -- just for what was in the tank.

17 Q Okay. The -- how do they know that? How does the person
18 who goes out know how much gas is in the tank?

19 A Well, there's different kinds of tanks, normally have a
20 meter on them, a gauge. They're, you know -- different tanks
21 have different ways in making that determination.

22 Q Isn't it true that for some tanks, the only way for you to
23 make that determination is to take the tank out?

24 A Right. And then what they do is they fill it, and
25 subtract the difference, and then you know what -- what was

1 there.

2 Q So the Blacks, what kind of --

3 A I'm sorry. I'm not a propane tech -- I can't tell you
4 which kind of tank they had.

5 Q If you look at the -- at the records of the Blacks' case -
6 - of -- if you -- if you looked at some of the records that
7 have been produced in discovery, would you be able to --

8 A I'm not a propane tech, I can't tell you how their tank
9 was configured.

10 Q Do you know for certain whether the -- whether the person
11 who went out had instructions as to the dollar amount to obtain
12 for payment?

13 A I -- I was not privy to what their marching orders were; I
14 don't know.

15 Q Before the person went out, was a message left on -- on
16 the Blacks' answering device -- answering machine or voice
17 mail?

18 A I have no knowledge of that.

19 Q If --

20 A I didn't -- I didn't leave a message for them.

21 MR. SABATINI: May I approach, Your Honor?

22 THE COURT: Oh, yeah.

23 BY MR. SABATINI:

24 Q I'm showing you a document that was produced by your
25 attorney in discovery. I -- could you please tell me whether

1 you recognize that?

2 A This looks like a copy of our memo screen and our
3 computers at work.

4 Q Okay.

5 (Pause)

6 Q So could you please tell me what happened on January 8th
7 at 9:13?

8 A At 9:13?

9 Q On January 8th, 2013, at 9:13 A.M., what happened?

10 A Uh, well, the memo here indicates that on 9:13, uh, it
11 says, "L.M. for customer," that means -- shorthand for left
12 message, uh -- "need payment today on last delivery. B.R.Y.,"
13 and that would be the initials of our Effort store manager,
14 Barry Yokum.

15 Q Right. So can we agree that on that date at that time, a
16 message was left on the Blacks' answering machine demanding
17 payment on the gas that had been delivered before the
18 bankruptcy --

19 A No.

20 Q -- case was filed?

21 A No, absolutely not.

22 Q Why not?

23 A Because it was all -- it was -- these memos were
24 shorthand. It's the gas remaining in the tank, that's all that
25 was being asked for.

1 Q How would she know that?

2 A (No verbal response)

3 Q How would she know how much needed to be paid? I -- I --

4 A I don't know what was the contents of this message.

5 Obviously if he left her a five-minute message, I could leave

6 someone a lengthy message and just-- the memo will say "left

7 message on voice mail."

8 Q When's the last time before that that a tech had been out

9 to the house?

10 A I have no idea.

11 Q So how could someone leave a message -- are you saying the

12 message would have demanded a specific balance that accounted

13 for the amount of gas that was in the tank at the time the

14 message was being left?

15 A I -- no, I'm not saying that. I'm saying I can't

16 determine from this brief memo the specifics of that message.

17 I'm not Barry, I don't -- I didn't make the call.

18 Q All right. Would you agree that that message was left

19 before the person actually went out to her house to pick up the

20 tanks?

21 A Yes.

22 Q All right. And then if you -- if you look at the next --

23 (Pause)

24 Q Then later that day, the tanks were picked up.

25 A Yes.

1 Q And the -- and the tech who went out to pick up the tanks
2 asked for payment before he took the tanks, right?

3 A I wasn't there, I don't know. If it's in the memos, I
4 mean I don't dispute it. But obviously I wasn't there.

5 MR. SABATINI: I have no further questions, Your
6 Honor.

7 THE COURT: Cross?

8 CROSS-EXAMINATION

9 BY MR. SCHAUB:

10 Q Let's just start where -- where we just left off. So
11 based on the information that you've looked at regarding the
12 Blacks, the bankruptcy --

13 THE COURT: I'll tell you what, I'll let you switch
14 places here if you want.

15 MR. SCHAUB: I'll stay here, Judge, I'm okay. I'm
16 fine.

17 THE COURT: You can move to any mic.

18 MR. SCHAUB: I apologize --

19 THE COURT: No, no.

20 MR. SCHAUB: -- to the recorder -- to the reporter.

21 BY MR. SCHAUB:

22 Q Uh, so just -- just so we understand, in November, the
23 Blacks had filed for bankruptcy, is that correct?

24 A If that's what the records indicate, I agree.

25 Q Okay. Well, let's look at -- now this was --

1 MR. SCHAUB: Judge -- this is awkward because you
2 don't have it and I -- I don't have a copy to give you.

3 THE COURT: Well, I don't know what you're referring
4 to.

5 MR. SCHAUB: I know. I know you don't, and you need
6 to because now Mr. Sabatini has used it. He hasn't marked it,
7 hasn't given it to you, um, so it's awkward for me to try and
8 use it now, which I need to do. So I apologize for that
9 inconvenience.

10 (Pause)

11 MR. SCHAUB: So I'll mark this, Judge -- I will mark
12 this as Defendant's Exhibit 1.

13 THE COURT: Which is -- are you going to have the
14 witness identify it or what?

15 MR. SCHAUB: I will, Judge.

16 THE COURT: Okay.

17 BY MR. SCHAUB:

18 Q Mr. Gordon, is that the document that Mr. Sabatini was
19 just asking you about?

20 A It's a -- actually it was the second page that he directed
21 my attention to, but it's the same thing. It's a computer, uh,
22 copy of our memo screen on the account.

23 Q For the Blacks?

24 A That's correct, for the Blacks.

25 Q Okay. And -- and when you say a memo screen, just

1 describe that for the Judge.

2 A Uh, we have various screens for on our computer for each
3 account. The memo screen is where we go in and put a brief
4 description of activity in an account, or phone calls, or other
5 matters relating to the account.

6 MR. SCHAUB: Judge, may I approach?

7 THE COURT: Yes.

8 BY MR. SCHAUB:

9 Q Now, Mr. Gordon, before we just talk about that briefly,
10 could you just explain to the Judge, when Heller's Gas receives
11 notice of a bankruptcy, is it Heller's intent to try to
12 continue to work with the customer?

13 A Yes.

14 Q And why is that?

15 A Uh, well, to provide him propane, for us to have business,
16 and actually that happens quite a bit.

17 Q Is -- are you generally successful with those efforts?

18 A Yes. Yes.

19 Q And you have -- can you tell the Judge, do you have
20 specific policies in place in dealing with the bankruptcies?

21 A Yes, we do.

22 Q And did you describe those for the Judge generally?

23 A I did. I think -- and it's been interspersed between
24 other testimony, so I won't bore the Judge more with it.

25 Q So does the screen shot, Exhibit 1, reflect when the --

1 when Heller's received notice of the Black bankruptcy?

2 A Uh, it says "Customer filing for bankruptcy. His attorney
3 called our office." And that is notated as of January 9th,
4 2013.

5 Q Go back to the first page of that exhibit, the third
6 entry, is there an entry for 11/14/2012?

7 A Yes, there is.

8 Q Okay. And are there any entries -- is that when Heller's
9 received notice of the bankruptcy?

10 A That -- that would be -- generally that'd be the same day
11 it's recorded, but it -- it -- it says, "Chapter 13 notice
12 received, C.O.D. going forward, B.Y." Once again, that B.Y. is
13 Barry Yokum, our manager at the Effort store.

14 Q And between November 14th and January 8th, did the Blacks,
15 or their lawyer, attempt to make any effort to try and deal
16 with continuing to do business with Heller's Gas?

17 A Uh --

18 Q Is there any notation about that?

19 A I don't see anything, no.

20 Q And be -- after November 14th, not having received any
21 communication regarding possibly wanting to continue doing
22 business, did Heller's Gas send out any invoices for the gas
23 that had been previously delivered and used by the Blacks?

24 A No.

25 Q And then in -- do you try to give a reasonable period of

1 time to the customer to try and make those arrangements with
2 regard to either continuing to do business or make some other
3 arrangements?

4 A Yes, we do. And to be honest with you, I can't give you a
5 hard and fast ten-day, 30-day, because everybody has unique
6 circumstance, so we try to work with them.

7 Q And sometimes as much as two months?

8 A Oh, absolutely. Even longer sometimes.

9 Q All right.

10 A It just depends --

11 Q And then --

12 A -- on what's going on in their life.

13 Q I won't repeat the testimony, I don't want -- I know -- I
14 don't want to burden the Judge, he heard what you said about --
15 about what a -- what a screen shot may or may not mean. But
16 all I want to ask you is whatever was said by the technician at
17 -- on the voice mail or whatever was said by the technician
18 when he went to the home of the Blacks, did you speak with Mr.
19 Sabatini that day?

20 A Yes.

21 Q And what did you tell -- what did Mr. Sabatini ask you in
22 terms of the Blacks continuing to do business with Heller's?

23 A Well, what he wanted -- the primary reason of the call, as
24 I understood it, was he wanted the tanks returned.

25 Q Okay. All right. Did you make clear to Mr. Sabatini --

1 MR. SCHAUB: Strike that.

2 BY MR. SCHAUB:

3 Q What did you tell Mr. Sabatini were the terms by which the
4 Blacks could continue to do business with Heller's Gas?

5 A The same as what our people would be instructed and our
6 managers are, which is they would have to pay us for the gas
7 remaining in the tank, all the gas already used would before
8 the bankruptcy, we had no intention to try to recover that or
9 bill for it. If they want to continue to be our customer,
10 after that is settled with the payment, they would have to pay
11 C.O.D. going forward, which is, you know, like it happens all
12 the time, frequently. So --

13 Q Did you --

14 A And, of course, that is the same thing as this because
15 it's in the context of the previous memo from Barry where he
16 says, you know, C.O.D. going forward.

17 Q I'll do my best not to repeat, but I just want to be
18 clear. With regard to the Reed account --

19 (Pause)

20 MR. SCHAUB: Judge, I'm going to mark as Defendant's
21 Exhibit 2 a series of e-mails that are identical to --

22 (Pause)

23 MR. SCHAUB: That were included as what I think was
24 Plaintiff's Exhibit 1 or Exhibit A, which I think were a series
25 of e-mails which began April 22nd, and then continued through

1 April 25th. And what I'm doing, Judge, is I am supplementing
2 those e-mails because those e-mails between Mr. Harmon and Mr.
3 Sabatini continued until April 30th. And I think it's very
4 important for the Court to see those e-mails, as well. So that
5 would be Defendant's Exhibit 2.

6 BY MR. SCHAUB:

7 Q So just with respect to your testimony, upon learning of
8 the Reed's bankruptcy, what was your understanding as to both
9 the Reed and Mr. Sabatini's intentions in terms of trying to
10 continue with the Reeds as a customer of Heller's?

11 A My understanding from -- from the conversations and the e-
12 mails and everything, the context was that Mr. Reed wanted to
13 continue as our customer. That he was even unaware that we
14 were named in the bankruptcy. And when he -- he said he had to
15 get in touch with his attorney about that; I never heard the
16 resolution of that. And wanted to know what needed to be done
17 to facilitate that process.

18 Q Are you referring to Mr. Reed's e-mail to Kevin Harmon,
19 Carlo Sabatini, Mary Peters, and Stacy Williams of April 22nd?

20 A Yes.

21 Q Just read that into the record, please?

22 A This is from Mr. Reed, Robert Reed, Monday, April 22nd,
23 2013 to Kevin Harmon, Carlo Sabatini, Mary Peters, and Stacy
24 Williams, "I will be in on Friday, my day off. Sorry this
25 happened. I was not aware utilities could be included. I

1 forwarded this to the lawyer, an associate for them, to let me
2 know how to handle this. Sorry, Kevin. Bobby Reed."

3 Q And as of April 30th, did Mr. Sabatini ever tell you that
4 Heller's was -- the Blacks were not -- I'm sorry.

5 A Reeds.

6 Q That the Reeds were not interested in continuing to do
7 business?

8 A That -- that was never resolved as a finality to me.

9 Q And if you had -- if Heller's had been advised that the
10 Reeds did not want to continue to do business with Heller's,
11 would you have sent any statements out?

12 A No, absolutely not. Once -- once there's a finality on
13 that issue, no further statement should be sent out or is sent
14 out.

15 Q And were the statements that were sent out informative?

16 A Yes.

17 Q Intended to inform Mr. Sabatini and --

18 A Right.

19 Q -- the -- and the Reeds as to what would be needed to
20 continue to do business?

21 A Right, he asked us for it, so we provided it.

22 Q Did there come a time when the Reeds did advise that they
23 no longer wanted to be a customer of Heller's?

24 A They called the store and asked that the tank be picked
25 up.

1 Q Was there any gas in the tank?

2 A No, I think it was all used at that point.

3 Q Did you go and pick up the tank?

4 A Yes, we did.

5 Q And were any further invoices sent out --

6 A No.

7 Q Let me finish the question.

8 A I'm sorry.

9 Q Were any further invoice -- once the Reeds instructed you
10 to come get the tanks and the tanks were picked up, did
11 Heller's send out any invoices?

12 A No.

13 MR. SCHAUB: That's all I have, Judge.

14 THE COURT: Any redirect?

15 MR. SABATINI: Just very briefly.

16 REDIRECT EXAMINATION

17 BY MR. SABATINI:

18 Q You said -- regarding Reed, you said "he asked us for"
19 referring -- excuse me -- referring to monthly statement. I
20 just want to be clear. You testified earlier that I had not
21 asked for you to continue sending monthly statements to Mr.
22 Reed. And instead, I think I understood your testimony to be
23 that in the context here, I had asked you for a statement
24 regarding what had been provided to Mr. Reed as of the time the
25 bankruptcy case was filed, is that fair?

1 A I don't think I understand your question. I'm sorry.
2 Would you rephrase it?

3 Q All right. Did I ask you for a statement of what had been
4 sent to Mr. Reed as of the time the bankruptcy case had been
5 filed?

6 A You didn't ask me for a statement.

7 Q Did I ask Heller's for a statement of what had been sent
8 to -- of -- of what gas had been provided to Mr. Reed as of the
9 time the bankruptcy case had been filed?

10 A I can only speak to myself, unless there's some other
11 evidence I can authenticate; you didn't ask me. I can only --

12 Q All right. So to your knowledge, did I ever ask Heller's
13 to provide any statements?

14 A I don't know how to try to make this any clearer for you.
15 You didn't ask me. I don't know of any other document. If you
16 have some other documentation that indicates otherwise, I'd be
17 glad to look at it for you.

18 Q No, no, that's --

19 THE COURT: Well, you know what, just answer the
20 question. Did -- are you aware of any request by Mr.
21 Sabatini --

22 THE WITNESS: No, that's what I said.

23 THE COURT: Just a second.

24 THE WITNESS: Uh.

25 THE COURT: Are you aware of any request made by Mr.

1 Sabatini to Heller's for a balance or a statement? Are you
2 aware of it?

3 THE WITNESS: No.

4 THE COURT: Okay.

5 MR. SABATINI: Thank you.

6 BY MR. SABATINI:

7 Q One other topic. On Blacks, you said that I called in
8 because I wanted the tanks returned. And I know this was a
9 while ago, and I'm sure that you didn't intentionally say
10 something that was not accurate. Would it be more accurate to
11 say that I called in before the tanks were actually taken, and
12 that Mrs. Black was on the phone with us, that we had a
13 conversation while your technician was there, and that I was
14 asking you to please not take the tanks?

15 A I -- I have -- I don't know where the tank was during the
16 time we were speaking. If -- if they were on the truck, being
17 unhooked, I don't know. But if you have a better memory of
18 that than I do, I'll defer to your memory of it, you know. But
19 I do know that after the tanks were out, you called me and
20 wanted them returned.

21 Q That's correct.

22 A And if I've -- if I have conflated those calls, I
23 apologize.

24 MR. SABATINI: Nothing further, Your Honor.

25 THE COURT: Anything else?

1 MR. SCHAUB: Just a follow-up, Judge, briefly on
2 that.

3 RECROSS EXAMINATION

4 BY MR. SCHAUB:

5 Q With regard to the Reed matter and the communications
6 with Mr. Sabatini in late April, leading up to the whole issue
7 of continuing -- reaffirmation of the debt --

8 A Right.

9 Q -- and continuing to do business with -- with Heller's
10 Gas, attached to the amended complaint --

11 MR. SCHAUB: Which I think is Exhibit C, Judge. I
12 think it's the one -- it's a one-page document captioned, "Back
13 Mountain Gas. Amount \$82.62."

14 BY MR. SCHAUB:

15 Q To the best of your knowledge, was that document faxed to
16 Mr. Sabatini on April 30th --

17 A I think it was.

18 Q -- of 2013?

19 A I think it was.

20 Q Okay. And is that invoice informational in terms of the
21 value of the gas, propane in tank?

22 A Right.

23 Q Propane in tank --

24 A Yes.

25 Q -- that's what it says, right?

1 A Yes.

2 Q And it's \$82.62, correct?

3 A Yes.

4 Q And --

5 A Yes.

6 Q -- that was informational for Mr. Sabatini.

7 A Right.

8 Q And in terms of the invoice which has been marked now as
9 P-E, and that was April 30th, and that has gas in tank, \$82.62,
10 and that's also informational, correct?

11 A That's correct.

12 MR. SCHAUB: That's all I have, Judge.

13 (Whereupon, at 1:25 P.M., the requested portion to be
14 transcribed concluded.)

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CERTIFICATE OF TRANSCRIBER

I, KAREN HARTMANN, a certified Electronic Court Transcriber, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A rectangular box containing a handwritten signature in cursive script that reads "Karen Hartmann".

Karen Hartmann, AAERT CET**D0475 Date: September 18, 2014
TRANSCRIPTS PLUS, INC.

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